

MINUTES

ALCOHOL AND TOBACCO COMMISSION

MAY 9, 2006

CALL TO ORDER/NOTING OF QUORUM

Chairman Heath called the meeting to order and noted the quorum and the attendance. Present were Commissioner Sturtz and Commissioner Guthrie. Also in attendance were Executive Secretary Choe and Major Poindexter.

Lisa Goldner and Alex Intermill of Bose McKinney and Evans, John Barnett and Jeff McKean were present as observers.

DISPOSITION OF MINUTES

Commissioner Sturtz moved to approve the minutes submitted for the meeting held on April 18, 2006 meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

DL40-21667 KROGER LIMITED PARTNERSHIP, D/B/A JAY-C PLUS – Hearing Judge Choe submitted her Proposed Findings of Fact and Conclusions of Law recommending that the Commission uphold the local board and deny this application for a new permit.

Commissioner Guthrie moved to adopt the hearing judge's findings and deny the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR04-05275 ARNOLD J. GILBERT – Hearing Judge Choe submitted her Proposed Findings of Fact and Conclusions of Law recommending that the Commission uphold the local board's recommendation and deny the renewal of this permit.

Commissioner Guthrie moved to adopt the hearing judge's findings and deny the renewal of this permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL49-21523 GARB-KO, D/B/A 7-11 STORE – Hearing Judge Choe submitted her Proposed Findings of Fact and Conclusions of Law recommending that the Commission overturn the local board's recommendation and approve the new permit. The hearing judge felt that the local board's recommendation was arbitrary and capricious.

Commissioner Guthrie moved to adopt the hearing judge's findings and approve the permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL19-21300 AND DL68-21627 WAL-MART STORES EAST LP – Hearing Judge Choe recommended that the Commission deny the Petitions for Intervention that were submitted in these two matters. The remonstrators failed to establish injury.

Commissioner Guthrie moved to adopt the hearing judge's findings and deny the petitions. Motion seconded by Commissioner Sturtz and it was unanimously approved.

CONSIDERATION OF APPLICATIONS

I incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by said staff with the authority of the Commission, and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permit applications for a new permit or application for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners and hereby move for approval of same and inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permit applications for catering and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permits to be placed in escrow for not more than one year, which have been reviewed and recommended by a Commissioner as appropriate for first or second year escrow and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Five hundred fifty-four (554) renewals approved, one hundred three (103) new and/or transfer permits approved, nine (9) permits approved for catering, eight (8) permits approved for first year escrow, four (4) permits approved for second year escrow, one (1) permit approved for third year escrow, three (3) permits approved for fourth year escrow and two (2) permits approved for fifth year escrow.

RENEWAL LETTERS AND WAIVER OF FEES

Commissioner Guthrie moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Motion seconded by Commissioner Sturtz and it was unanimously approved.

APPLICATIONS FOR DISCUSSION

DL54-22252 RMD MARKETING LLC –

Chairman Heath – New type 115 application with the local board voting two (2) to one (1) to disapprove.

Commissioner Guthrie – Mr. Chairman, I have reviewed that file and the only reasoning I could find stated in the file for turning this permit down was that the local board does not believe gas stations should sell alcohol. Therefore, I move that we reverse the finding of the local board and approve the issuance of this permit.

Commissioner Sturtz – Second.

Chairman Heath – Motion carries.

RR91-22272 DWAYNE’S WORLD, INC., D/B/A DOUBLE D’S SPORTS BAR & GRILL – Chairman Heath noted this is a new type 210-1 application with the local board voting three (3) to zero (0) to approve.

Commissioner Guthrie moved to uphold the local board’s recommendation and approve the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL45-22208 ST. GEORGE OF SHELL, INC., D/B/A SHELL OIL –

Chairman Heath – New type 104 application with the local board voting four (4) to zero (0) to disapprove.

Commissioner Guthrie – This file, the stated reasons of the local board was that the community does not need or desire this service in that area. Therefore, I move that we uphold the local board and disapprove the application.

Commissioner Sturtz – Second.

Chairman Heath – Motion carries.

RR84-22256 12 POINTS DANCE & POOL HALL, INC., D/B/A RIO – Chairman Heath noted this is a new type 103 application with the local board voting three (3) to zero (0) to disapprove.

Commissioner Guthrie moved to uphold the local board's recommendation and deny the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR45-20163 WICKER AVENUE INVESTMENTS, LLC, D/B/A ST. JOHN'S PUB – Chairman Heath noted this is a type 210-1 transfer of location and ownership with the local board voting four (4) to zero (0) to approve.

Commissioner Guthrie moved to uphold the local board's recommendation and approve the transfers. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR82-05259 WINGZ 2U, LLC – Chairman Heath stated this permittee requests permission to file transfer of ownership paperwork for this permit. The renewal of this permit was previously denied by the Commission.

Commissioner Guthrie moved to grant this request. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR49-11792 MKT VIBRATION, INC., D/B/A ZAMBERI BAR & GRILL – Chairman Heath noted this corporation is requesting that the Commission reactivate this permit.

Commissioner Guthrie moved to grant this request due to the fact that there may have been some miscommunications on the part of the Commission. Motion seconded by Commissioner Sturtz and it was unanimously approved.

INACTIVE FILES

Commissioner Guthrie moved to make sixteen (16) permits inactive. Fifteen (15) permits are not subject to auction and one (1) permit is subject to auction. Motion seconded by Commissioner Sturtz and it was unanimously approved.

OLD BUSINESS

No Old Business

NEW BUSINESS

AMERICAN LEGION POST 330 SPECIAL ADMINISTRATIVE LAW JUDGE

Judge Choe – I have a matter that I would like to bring to the Commission's attention, regarding American Legion Post 330. I respectfully request that this Commission appoint an independent administrative law judge to handle the appeal matter. In light of recent developments regarding that case, I do not feel that it would be prudent for me to be involved in this case any longer.

Commissioner Guthrie – On the basis of the appearance of impropriety, you feel you would be unable to do?

Judge Choe – That’s right.

Chairman Heath – For the record it should be noted that we are being sued by American Legion Post 330, stating that the Commission and the Excise Police do not have the authority to regulate gambling. That suit was dismissed yesterday. We have violations against American Legion Post 330. There is still a federal, civil rights lawsuit that is pending in federal court that was filed at the same time.

Commissioner Guthrie – If appropriate, I move that grant the petition and appoint an administrative law judge.

Commissioner Sturtz – I would second that.

Chairman Heath – Motion carries.

POLICY DETERMINATIONS

No Policy Determinations

UNDER ADVISEMENT

Nothing Under Advisement

ANNOUNCEMENTS

No Announcements

ADJOURNMENT

Commissioner Sturtz moved to adjourn the meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Approved this _____ day of _____, 2006.

DAVE HEATH, CHAIRMAN

DALE STURTZ, COMMISSIONER

FRANK GUTHRIE, COMMISSIONER